

**CALENDAR ITEM
C68**

A 35

04/20/17

PRC 6674.9

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**TERMINATION OF A GENERAL PERMIT – PUBLIC AGENCY USE, ISSUANCE OF A
GENERAL LEASE – PUBLIC AGENCY USE, AND ENDORSEMENT OF AN
EXISTING SUBLEASE**

APPLICANT/LESSEE/SUBLESSOR:

City of Pismo Beach

SUBLESSEE:

Blair W. and Cheryl A. Sheldon

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Pacific Ocean, adjacent to Pismo State Beach,
Pismo Beach, San Luis Obispo County.

AUTHORIZED USE:

Continued operation and maintenance of an existing pier, and the
construction of the Pismo Pier Rehabilitation Project.

LEASE TERM:

25 years, beginning April 20, 2017.

CONSIDERATION:

Annual rent in the amount of \$125, with additional consideration being the
Public Use and Benefit; and the State reserving the right to fix a different
rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

1. Lessee shall conduct a structural and utility safety assessment
inspection reports during the lease term for the improvements in
compliance with the American Society of Civil Engineers (ASCE),
as specified in the lease. Lessee shall provide a copy of the
inspection report, to include any necessary remedial action plan, to
Lessor staff for review and comment.

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2. Lessee shall execute a reimbursement agreement with Lessor to pay for any and all reasonable costs and expenditures paid or incurred by the Commission, its staff or both for review and approval of any plan or related materials required herein, including but not limited to any review or preparation of reports, documents or other actions as required pursuant to the California Environmental Quality Act (CEQA), plan reviews, and/or amendments. Payment by Lessee shall be in a form and manner which is determined by Lessor's staff and is consistent with the requirement of State law.
3. Five years prior to the expiration of this Lease, Lessee shall submit to Lessor a summary report that details resiliency planning efforts and adaptation strategies related to sea-level rise impacts within the Lease Premises. The report will include a record of flood frequency and extent, and protective measures taken to reduce flood risk to public and visitor-serving facilities within the Lease Premises and upland property. Findings from the utility safety assessment inspection report for the Pismo Pier will also be summarized in the report as well as any emergency repairs made to structures located in the Lease Premises. The contents of this report will enable Lessor and Lessee to assess the effectiveness of these planning efforts in maintaining and enhancing the resiliency of Public Trust resources and values within the Lease Premises subject to the risks associated with sea-level rise and climate change.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503;
California Code of Regulations, title 2, section 2000, subdivision (b).

Background:

On May 24, 1984, the Commission authorized a 35-year General Permit – Public Agency Use to the City of Pismo Beach (City), for the operation and maintenance of the Pismo Pier (Pier) and related concessions. The Commission also approved a sublease to Blair W. and Cheryl A. Sheldon, for operation of the bait shack located on the Pier ([Calendar Item C04, May 24, 1984](#)). The permit to the City will expire on April 31, 2019. On July 12, 1984, the Commission approved an amendment to the permit to provide for a proposed Pier expansion which was to be partially financed through funding commitments from the Wildlife Conservation Board and the Federal Emergency Management Administration ([Calendar Item C10,](#)

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[July 12, 1984](#)). On October 25, 1984, the Commission approved an amendment to the permit to assist the City in obtaining title insurance and restrict the use of any revenue derived from or attributable to the lease premises to use on the premises ([Calendar Item C17, October 25, 1984](#)). In order to finance the remainder of the Pier construction the City formed the City of Pismo Beach Public Facilities Corporation (Corporation). The City entered into a sublease agreement with the Corporation, which then subleased the property back to the City for pier maintenance and operation. Under the sublease agreement, the City is obligated to make payments to the Corporation for the use and occupancy of the property. The Corporation is obligated to assist the City in the Pier project by assigning the lease payments to a trustee responsible for administering funds for the improvement and restoration of the Pier. On July 25, 1985, the Commission approved a change in the named Trustee for the Corporation from Bank of America NT & SA, Corporate Agency Division, to Interstate Bank of California, Corporate Trust Division ([Calendar Item 22, July 25, 1985](#)).

The pier was originally constructed in 1881 at the end of Main Street as a 1,600-foot-long wharf to support commercial trade. That pier was extended another 180 feet in length in 1893 to support steamship travel to Pismo Beach. A storm in 1905 washed out the original structure. A new pier and seawall were completed in 1924 in the current location at the end of Pomeroy Avenue. In 1963, the County of San Luis Obispo obtained a lease from the Commission for the lands occupied by the Pier, and extended the structure another 100 feet for a total length of 1,880 feet. Storm damage in 1984 required restoration and repair which included changes to the size and shape, resulting in the existing configuration.

The existing Pier consists of 73 bents of varying age and material type due to different repairs over the years. Bents are the cross sections that support the pier decking. The number of piles per bent varies from four to a maximum of 23. The Pier is composed of structural steel and timber components including steel and timber piling, timber beams and bracing, and steel connections. Deck topsides and railing are composed of timber with steel deck spikes and connections. In addition to pedestrian and vehicular traffic, the Pier supports electrical utility conduit and water piping. The portion of the Pier located on sovereign land measures approximately 1,200 feet and varies in width from approximately 32 feet to more than 182 feet. The Pier includes cantilevered fishing decks, four widened belvederes or viewing areas, and one tapered section.

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A partial inspection of the Pier was performed above and below water in 2009. The scope of the inspection included only the portions of the Pier located between Bents 20 and 30 and Bents 34 through 52. The inspection assigned a Condition Assessment Rating of Poor. However, this rating only included the oldest portions of the Pier and did not include the newer timber pile-supported areas, nor did it include the steel pile-supported offshore end.

In 2015, the City retained Shoreline Engineering, Inc., (Shoreline) to perform a comprehensive structural inspection of the Pier. Based on the findings in the Comprehensive Structural Inspections Report (2015 Report), dated March 23, 2015, Shoreline also assigned a Condition Assessment Rating of Poor. Generally, Shoreline recommended repairs to mitigate deterioration and extend the service life of the Pier. However, Shoreline recommended that some repairs be made on an urgent basis. The report also noted that load restrictions currently in place should be maintained, vehicle access should be limited to essential services only, and extra caution should be exercised between Bents 34 and 52.

In response to the poor structural rating and recommendations of Shoreline's Report, the City proposes to perform structural repairs to the middle section of the Pier to accommodate heavier loads that the Pier receives, such as emergency vehicles. This repair work is considered a priority for safety and continued public access. The City also plans to improve existing amenities on the Pier including benches, signage, and lighting. Rather than amend the current permit, the City wishes to terminate the current permit and is applying for a new General Lease – Public Agency Use, for the continued use and maintenance of the Pier and authorization for the proposed Pismo Pier Rehabilitation Project (Project).

Repair work for the Project is expected to begin in June 2017 and conclude by June 2019, and will focus on those portions of the Pier that received a poor rating in the 2015 Report. The Pier structure will be repaired to comply with current safety standards and to provide added longevity. The main work area will occur within the middle bent segments (Bents 13-50) where timber piles installed in 1924 will be replaced with steel piles using pile-driving methods. Existing steel piles in the end section (Bents 51-73) and the new steel piles will be coated with a protective material to delay the effects of corrosion. Decking and railing will be replaced completely to ensure uniformity in maintenance schedules.

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Public Trust and State's Best Interests Analysis:

Since the Pier's original construction in 1881, it has been open to and used by the public for commerce, fishing, and navigation needs. The Pier is operated and maintained by the City of Pismo Beach and provides public recreational access to the beach and the ocean. The Pier is used for recreational fishing and provides fish cleaning tables as a public amenity. The only commercial enterprise associated with the Pier on sovereign land is a small bait shop that operates under an existing sublease with the City. The bait shop is consistent with Public Trust uses because it facilitates recreational fishing from the Pier. Additionally, the sublessee would name the State as an additional insured insofar as its operations within the lease premises are concerned for all liability insurance coverage required under the sublease.

The City estimates that more than 750,000 people visit the Pier in an average year. The Pier is a major coastal resource for the City as a community fishing pier, providing regional recreational access and visitor-serving amenities, and serving as a facility for special events including the City's Fourth of July fireworks celebration.

The proposed Project's goal is to replace the degraded portions of the Pier, as well as update the load-bearing capacity of the current facilities to accommodate emergency response vehicles and improve public safety to ensure the Pier will remain open as a public resource.

While there will be some short-term impacts to public access during construction, the impact to Public Trust uses and needs will be limited and temporary as the portions of the Pier open to the public during construction will gradually increase as phases are completed. The beach will remain open and accessible to the public during construction and staging areas will be limited to allow continued use of the Pier parking lot. The Pier will remain open during construction. Certain portions of the Pier will remain closed until the Project is completed, but sections will be re-opened to the public as they are rehabilitated. Repair work will occur only on weekdays between 7 a.m. and 7 p.m. to minimize impact to public access during weekends.

Commission staff has contacted staff of both the California Coastal Commission (CCC) and the National Marine Fisheries Service (NMFS) about the Project. Neither CCC nor NMFS staff object to the Project. Because the Project is a like-for-like replacement, any impact will be minimal and temporary. Therefore, no change to the Pier's footprint or

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long-term impacts to Public Trust resources and values are anticipated as a result of the Project.

The proposed lease is limited to a 25-year term and does not grant the lessee exclusive rights to the lease premises. Lease terms will require the lessee to indemnify the State for any liability incurred as a result of the lessee's activities on the lease premises.

Climate Change:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect open coastal areas in California. By 2030, the region could see up to 1 foot of sea-level rise (from year 2000 levels), 2 feet by 2050, and possibly over 5 feet by 2100 (National Research Council 2012). Rising sea levels can lead to increased flooding and larger tidal events, and can affect erosion and sedimentation rates. As stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea-level rise). The combination of these conditions will likely result in increased wave run up, storm surge, and flooding in coastal and near coastal areas. Climate change and sea-level rise will further influence coastal areas by changing erosion and sedimentation rates. Beaches and coastal landscapes will be exposed to increased wave force and run up, potentially resulting in greater beach erosion than previously experienced.

Improvements to the lease area include a fixed pier that is planned for rehabilitation. The Pier is located on a sandy beach exposed to open ocean and wave action in the surf zone located between Bents 20 and 50. The Project itself is intended to improve the overall structural integrity of the Pier and help it withstand the anticipated impacts of sea level rise. The Project will include structural repairs to the Pier and adjoining seawall. The Pier repairs include some pile and structural member replacement, work at the deck level to relocate/upgrade the fire line, water line, and electrical utilities, installation of a Pier lighting system, a public art component, and new benches, tables, fish cleaning tables, and a visitor kiosk.

The increase in sea level combined with more frequent and stronger storm events will likely expose the lease area structures to higher flood risks, comprised of greater total water levels for longer periods of time. Sea-level rise is not anticipated to affect the pier structure during the lease term due to the width of the sandy beach at the site and the fact that a sea-level increase of 8.38 feet would be required to reach the base of the seawall

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below the pier entrance. However, the seawall and fixed pilings may need to be further reinforced to withstand future conditions as any degradation of these components could result in property damage and public safety concerns within the lease area.

Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the effects of climate change, including sea-level rise. Annual summary reports are required under the terms of the lease to provide information on the facility's sea-level rise vulnerability and adaptation capacity. Also, a subsequent summary report near the end of the lease term is required to document flood frequency, protective measures taken to reduce flood risk, findings from the utility safety assessment inspection, and any emergency repairs made, to allow the Commission and the City to assess planning effectiveness.

Conclusion:

For all the reasons above, Commission staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine, will not substantially interfere with Public Trust needs at this location at this time and for the foreseeable term of the proposed lease, and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
2. Termination of the permit is not a project as defined by CEQA because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

3. **Existing Pier Facilities:** Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

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Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

4. **Pier Rehabilitation Project:** On November 1, 2016, the City, acting as the lead agency under the provisions of CEQA, determined that the Pismo Pier Rehabilitation Project, as described above, was categorically exempt from CEQA pursuant to California Code of Regulations, title 14, section 15302, under Class 2, Replacement or Reconstruction. Staff recommends the Commission concur with the City's determination.
5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

FURTHER APPROVALS REQUIRED:

U.S. Army Corps of Engineers
California Coastal Commission
Central Coast Regional Water Control Board
California Department of Parks and Recreation

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing Pier Facilities: Find that issuance of the lease is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Pier Rehabilitation Project: Concur with the City's determination that the pier rehabilitation is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, under Class 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

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SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially interfere with the Public Trust needs and values at this location at this time, is consistent with the common law Public Trust Doctrine, and is in the State's best interests.

AUTHORIZATION:

1. Authorize termination of Lease No. PRC 6674.9, a General Permit – Public Agency Use effective April 20, 2017.
2. Authorize issuance of a General Lease – Public Agency Use, to the City of Pismo Beach beginning April 20, 2017, for a term of 25 years, for the continued operation and maintenance of the existing Pismo Pier, and for the construction of the Pismo Pier Rehabilitation Project within the same footprint as the existing pier as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration in the amount of \$125, with additional consideration being the Public Use and Benefit; and the State reserving the right to fix a different rent if the Commission finds such action to be in the State's best interests.
3. Authorize, by endorsement, an existing sublease agreement between the City of Pismo Beach and Blair W. and Cheryl A. Sheldon as sublessee, for maintenance and operation of a bait shop located on the lease premises; sublessee shall name the State as an additional insured insofar as its operations within the lease premises are concerned for all liability insurance coverage required under the sublease.

EXHIBIT A

PRC 6674.9

LAND DESCRIPTION

A strip of tide and submerged land 205 feet wide in the Pacific Ocean at Pismo Beach, San Luis Obispo County, California, said strip lying 102.5 feet on each side of the following described centerline.

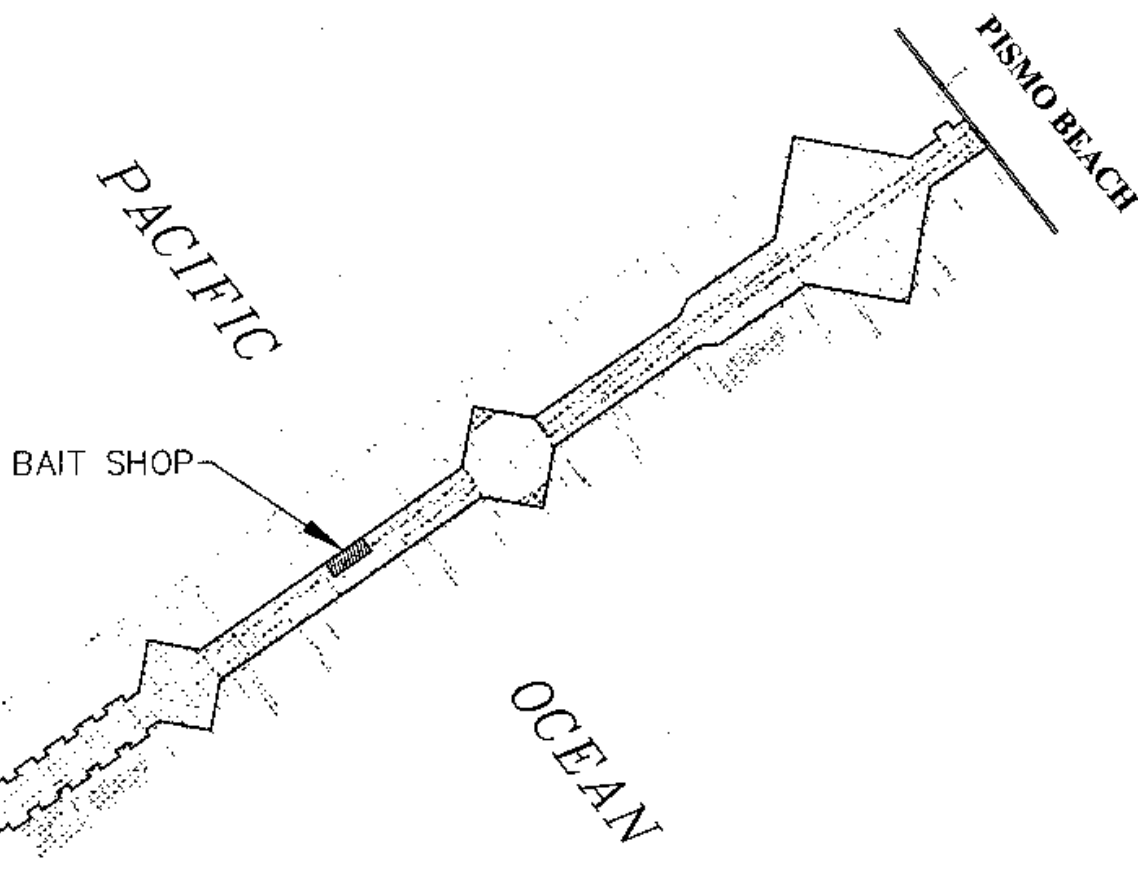
COMMENCING at the most easterly corner of Block 8 of the "Town of El Pizmo", City of Pismo Beach, County of San Luis Obispo, State of California, according to the map filed for record June 5, 1905, in Book "A" of Maps, Page 155 in the Office of the County Recorder of said County; thence S 47° 15' W 283.43 feet along the southeasterly line of said Block 8; thence N 52° 38' W 103.21 feet; thence S 68° 10' W 162.35 feet to the TRUE POINT OF BEGINNING; thence S 68° 10' W 1200 feet to the end of the herein described line.

END OF DESCRIPTION

REVISED JULY 30, 1984 BY BOUNDARY AND TITLE UNIT.

NO SCALE

SITE



PISMO PIER REHABILITATION PROJECT

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 6674.9
CITY OF PISMO BEACH
APN 005-201-021, 022, 023
GENERAL LEASE -
PUBLIC AGENCY USE
SAN LUIS OBISPO CO.



JAK 4/17